



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2008-0603; FRL-9904-12-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania;  
Philadelphia County Reasonably Available Control Technology under the 1997 8-Hour  
Ozone National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving two State Implementation Plan (SIP) revisions for the Commonwealth of Pennsylvania. The SIP revisions consist of a demonstration that Philadelphia County is meeting the requirements of reasonably available control technology (RACT) of the Clean Air Act (CAA) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) under the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA's conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration is based on Philadelphia County's commitment to submit additional SIP revisions addressing source-specific RACT controls for major sources of VOC and NO<sub>x</sub> in the County. This action is being taken under the CAA.

**DATES:** This final rule is effective on [insert date 30 days from date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2008-0603. All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) webpage. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104. Copies are also available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at [velez-rosa.emlyn@epa.gov](mailto:velez-rosa.emlyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On June 19, 2013 (78 FR 36716), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. In the NPR, EPA proposed conditional approval of Philadelphia County's SIP revisions addressing the RACT requirements under the 1997 8-hour ozone NAAQS. The formal SIP revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of Philadelphia Air Management Services (AMS) on September 29, 2006 and June 22, 2010 (hereafter the 2006 SIP revision and the 2010 SIP revision, respectively).

On November 29, 2005, EPA published an ozone implementation rule to address nonattainment SIP requirements for the 1997 8-hour ozone NAAQS (the Phase 2 Ozone Implementation Rule). *See* (70 FR 71612 (November, 29, 2005)). In the Phase 2 Ozone Implementation Rule, EPA required that states meet the RACT requirements under the 1997 8-hour ozone NAAQS, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS continue to represent adequate RACT control levels for 8-hour ozone attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels. *See* 70 FR 71655.

However, the Court of Appeals for the District of Columbia Circuit subsequently held that a particular provision in the Phase 2 Ozone Implementation Rule, which allowed the NO<sub>x</sub> SIP call, a cap-and-trade program for NO<sub>x</sub>, to substitute as RACT for electric generating units (EGUs) for the 1997 ozone NAAQS, was inconsistent with the statutory requirements of section 172(c)(1) of the CAA and remanded that provision of the rule to EPA. *See NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). Since the Philadelphia County 2006 SIP revision relies on the NO<sub>x</sub> SIP Call to meet the NO<sub>x</sub> RACT requirements for EGUs and it does not specifically and sufficiently address the source-specific RACT determinations for 46 major sources that were previously approved under the 1-hour ozone standard, EPA determined that it cannot proceed with the final approval of this SIP revision, as proposed on August 26, 2008 (73 FR 50270) and on June 19, 2013 (78 FR 36716), withdrew the August 26, 2008 proposed rulemaking action to approve the 2006 SIP revision.

## **II. Summary of SIP Revisions**

On September 29, 2006, PADEP submitted on behalf of AMS a SIP revision for Philadelphia County to meet the RACT requirements for the 1997 8-hour ozone NAAQS. The 2006 SIP revision consists of a RACT demonstration for Philadelphia County for NO<sub>x</sub> and VOC, and includes: (1) A certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA for Philadelphia County under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls and continue to represent RACT for the 8-hour implementation purposes; (2) the adoption of Federally enforceable permits that represent RACT control levels for four major VOC sources; and (3) a negative declaration that certain VOC sources do not exist in Philadelphia County.

On June 22, 2010, PADEP submitted another SIP revision addressing Philadelphia County's RACT requirements under the 1997 8-hour ozone standard. The 2010 SIP revision consists of: (1) The adoption of two regulations to meet control technique guideline (CTG) RACT requirements; and (2) a negative declaration for a particular CTG source category. The 2010 SIP revision supersedes portions of the 2006 SIP revision addressing specific CTG RACT requirements.

Finally, on April 26, 2013, PADEP submitted on behalf of AMS a letter committing to submit additional SIP revisions to address source-specific RACT controls under the 1997 8-hour ozone standard for Philadelphia County pursuant to section 110(k)(4) of the CAA. Additional details on the SIP revisions are included in the NPR and will not be restated here. No public comments were received on the NPR for this action.

### **III. EPA's Rationale for Conditional Approval**

In light of the D.C. Circuit decision in *NRDC v. EPA* regarding requirements in the Phase 2 Ozone Implementation Rule, EPA determined it could not approve the presumption in the 2006 SIP submittal that the NO<sub>x</sub> SIP Call constitutes RACT for EGU sources in Philadelphia County. Thus, AMS needs to perform a NO<sub>x</sub> RACT analysis for EGUs as provided in the April 26, 2013 commitment letter from PADEP for AMS. EPA also determined that the 2006 SIP revision does not specifically and sufficiently address whether the source-specific RACT controls for 46 major sources in Philadelphia County that were previously approved in the Pennsylvania SIP under the 1-hour ozone NAAQS continue to represent RACT for the 1997 8-hour ozone NAAQS. Therefore, to satisfy the major source RACT requirement for the 1997 8-hour ozone NAAQS, AMS must either: (1) Provide a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP under the 1-hour ozone NAAQS for major sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to represent adequately RACT for the 1997 8-hour ozone NAAQS; or (2) perform a source-specific RACT analysis for each source for which controls do not currently and adequately represent RACT for the 1997 8-hour ozone NAAQS.

In this rulemaking action, EPA is conditionally approving Philadelphia County's 1997 8-hour ozone RACT demonstration provided in the 2006 and 2010 SIP revisions, based upon the commitment from AMS in the April 26, 2013 letter from PADEP to submit additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County.

The SIP revisions, to be submitted by PADEP on behalf of AMS no later than twelve months from today's final conditional approval, will address source-specific RACT determinations for the following major sources in Philadelphia County: (1) Exelon – Delaware Station; (2) Exelon – Richmond Station; (3) Exelon – Schuylkill Station; (4) Veolia – Edison Station (formerly Trigen- Edison Station); (5) Veolia – Schuylkill Station (formerly Trigen- Schuylkill Station); (6) Philadelphia Energy Solutions Refinery (formerly Sunoco Refinery); (7) Kraft Nabisco (formerly Nabisco Biscuit Company); (8) Temple University, Health Sciences Center; (9) GATX Terminals Corporation; and (10) Honeywell (formerly Sunoco Chemicals, Frankford Plant). The SIP revisions to be submitted will also include a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP for the 1-hour ozone NAAQS for the remaining sources in Philadelphia County continue to represent adequately RACT for the 1997 8-hour ozone NAAQS.

#### **IV. Final Action**

In this rulemaking action, EPA is conditionally approving Philadelphia County's RACT demonstration under the 1997 8-hour ozone NAAQS, as provided in the 2006 and the 2010 SIP revisions. Pursuant to section 110(k)(4) of the CAA, this conditional approval is based upon the April 26, 2013 letter from PADEP for AMS committing to submit to EPA, no later than twelve months from today's final conditional approval, additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions will provide source-specific RACT determinations for 10 major sources of VOC and NO<sub>x</sub> in Philadelphia County and a certification that previously adopted source-specific RACT controls

approved by EPA in Pennsylvania's SIP for the 1-hour ozone NAAQS for the remaining sources in Philadelphia County continue to adequately represent RACT for the 1997 8-hour ozone NAAQS. Once EPA has determined that AMS has satisfied this condition, EPA shall remove the conditional nature of this approval and Philadelphia County's 1997 8-hour ozone RACT demonstration will, at that time, receive a full approval status. Should AMS fail to meet the condition specified above, today's final conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration will convert to a disapproval.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory



Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action [add language that is unique to this action] may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: November 29, 2013

W. C. Early, Acting  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart NN-Pennsylvania**

2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for “RACT under the 1997 8-hour ozone NAAQS” for Philadelphia County at the end of the table. The added text reads as follows:

**§ 52.2020 Identification of plan.**

\* \* \* \* \*

(e)\*\*\*

(1) \*\*\*

<b>Name of non-regulatory SIP revision</b>	<b>Applicable geographic area</b>	<b>State submittal date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
* * * * *				
RACT under the 1997 8-hour ozone NAAQS	Philadelphia County	9/29/06 6/22/10	[Insert Federal Register publication date] [Insert page number where the document begins]	Conditional approval. See § 52.2023(l).

3. Section 52.2023 is amended by adding paragraph (l) to read as follows:

**§ 52.2023 Approval status.**

\* \* \* \* \*

(l) EPA conditionally approves Philadelphia County's reasonably available control technology (RACT) demonstration under the 1997 8-hour ozone NAAQS, as provided in SIP revisions submitted on September 29, 2006 and June 22, 2010. Pursuant to section 110(k)(4) of the CAA, this conditional approval is based upon an April 26, 2013 letter from Pennsylvania on behalf of Philadelphia County committing to submit to EPA, no later than twelve months from EPA's final conditional approval, additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions, to be submitted by Pennsylvania on behalf of Philadelphia County, will address source-specific RACT determinations for ten (10) major sources in Philadelphia County and will include a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP under the 1-hour ozone NAAQS for the remaining sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to adequately represent RACT for the 1997 8-hour ozone NAAQS.

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